

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 27 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0009
)	DEPARTMENT B
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
MICHAEL ARNOLD GARCIA,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20074856

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Joseph L. Parkhurst

Tucson
Attorneys for Appellee

Law Offices of Thomas Jacobs
By Thomas Jacobs

Tucson
Attorney for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 Appellant Michael Garcia was charged by indictment with first-degree murder, drive-by shooting, and six counts of endangerment. A jury found him not guilty of the murder charge or its lesser-included offenses but found him guilty of the remaining

offenses. The jury also found that all of the endangerment counts were dangerous in nature. The trial court found Garcia had two prior felony convictions. Initially, it sentenced Garcia to concurrent terms of imprisonment, the longest of which was 15.75 years. After determining that it had imposed an illegal sentence, however, the court vacated Garcia's sentences and resentenced him to enhanced, presumptive, concurrent prison terms of 10.5 years for the drive-by shooting and 2.25 years for each of the endangerment counts. Garcia appealed, and counsel has filed a brief citing *Anders v. California*, 386 U.S. 738 (1967), *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Garcia has not filed a supplemental brief.

¶2 Pursuant to our obligation under *Anders*, we have reviewed the entire record for reversible error and have found none. Viewed in the light most favorable to sustaining the jury's verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), the evidence established that Garcia had been a passenger in a blue Camaro whose occupants were involved in a shoot-out with the occupants of two other vehicles, a truck and a sport-utility vehicle (SUV). The victims were riding in the truck, which was struck by multiple bullets; one of the passengers in the truck was killed. Evidence was presented at trial that Garcia had been one of the shooters and had admitted to the driver of the SUV that he had fired the fatal shot.

¶3 "A person commits drive by shooting by intentionally discharging a weapon from a motor vehicle at a person, another occupied motor vehicle or an occupied structure." A.R.S. § 13-1209(A). Felony endangerment requires proof that the defendant

“recklessly endanger[ed] another person with a substantial risk of imminent death.”

A.R.S. § 13-1201(A), (B). Sufficient evidence supported Garcia’s convictions, and the sentences imposed were within the statutory range for his offenses.

¶4 Garcia’s convictions and sentences are affirmed.

/s/ *Peter J. Eckerstrom*

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ *J. William Brammer, Jr.*

J. WILLIAM BRAMMER, JR., Judge

/s/ *Garye L. Vásquez*

GARYE L. VÁSQUEZ, Judge